INTERIOR BOARD OF INDIAN APPEALS

Daniel Conway v. Billings Area Director, Bureau of Indian Affairs

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

DANIEL CONWAY

v.

ACTING AREA DIRECTOR, BILLINGS AREA OFFICE,

BUREAU OF INDIAN AFFAIRS

IBIA 82-41-A Decided July 16, 1982

Appeal from a February 17, 1982, decision of the Acting Area Director, Billings Area Office, Bureau of Indian Affairs, that an Indian preference bid lease of a range unit should be canceled in favor of Indian allocation use pursuant to a Blackfeet tribal resolution.

Affirmed as modified.

1. Indian Lands: Leases and Permits: Grazing: Allocation

   Under 25 CFR 151.10, the tribe establishes procedures and priorities for allocation of tribal, tribally controlled Government, and individual lands.

2. Indian Lands: Leases and Permits: Grazing: Allocation

   Under Blackfeet Tribal Resolution 9-79, an Indian grazing her own livestock is a higher priority user of land than an Indian grazing non-Indian-owned livestock.

3. Indian Lands: Leases and Permits: Grazing: Allocation--Indian Lands: Leases and Permits: Grazing: Revocation or Cancellation

Under Blackfeet Tribal Resolution 9-79, an Indian grazing her own livestock is entitled to an allocation of land equal to the number of the herd plus 25 percent, up to a maximum of 500 head per year, and can cause the cancellation of all or part of a grazing lease which is not used for the grazing of Indian-owned livestock.

APPEARANCES: Daniel Conway, pro se; Patricia Compton, pro se; Richard Aldrich, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Billings, Montana, for the Bureau of Indian Affairs. Counsel to the Board: Kathryn Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Daniel Conway (appellant), a member of the Blackfeet Tribe, has sought review of a February 17, 1982, decision of the Acting Area Director, Billings Area Office, Bureau of Indian Affairs (BIA), holding that his Indian preference bid lease on Range Unit #27 on the Blackfeet Reservation in Montana should be canceled in favor of an application for allocation for Indian-owned livestock pursuant to Blackfeet Tribal Resolution 9-79 and 25 CFR 151.10 and .15. Appellant filed an appeal with the Deputy Assistant Secretary--Indian Affairs (Operations) who referred the case to the Board of Indian Appeals on May 21, 1982, under 25 CFR 2.19(a)(2).

On May 24, 1982, the Board docketed the appeal and referred it to the Hearings Division of this Office for an expedited evidentiary hearing and

recommended decision. Administrative Law Judge Garry V. Fisher held a hearing on June 9, 1982, and submitted a recommended decision which the Board received on July 7, 1982. Appellant's exceptions to the recommended decision were received on July 12, 1982. Appellee's statement that she would not file exceptions was received on July 14, 1982.

Background

Appellant has leased Range Unit #27 since at least March 1, 1953 (Tr. 16). His present lease covers the period January 1, 1979, through December 31, 1983 (see Exh. 2). 1/ Appellant has not owned cattle since approximately 1957 (Tr. 83), but has consistently run cattle for non-Indians on Range Unit #27 (Tr. 83-84). Appellant believes that his use of the unit was common knowledge to both the tribe and BIA (Tr. 84). Appellant owns 160 acres of irrigated land in fee which is also leased (Tr. 84, 86). It appears that these lands provide appellant's income (see Exh. 17).

On October 15, 1981, Patricia Compton (appellee), also a member of the Blackfeet Tribe, applied for an allocation of grazing privileges on Range Unit #27 (see Exh. 3). This application was filed pursuant to the provisions of 25 CFR 151.10 and Blackfeet Tribal Resolution 9-79, both of which provide priority of use for Indian-owned livestock on tribally and individually owned trust lands.

1/ Exhibit references are to evidence adduced at the June 9, 1982, hearing.

Appellee's application was considered by the Blackfeet allocation committee and in its report of November 10, 1981, the committee recommended that Range Unit #27 be left with appellant (see Exh. 13). The Superintendent of the Blackfeet Agency, based partly on this recommendation, denied appellee's application. The denial letter, dated November 12, 1981, states "that Mr. Conway has been a satisfactory permittee on this Range Unit for a long time. And that loss of this unit could pose a financial hardship on him" (see Exh. 5). Appellee appealed this decision to the Acting Area Director, who, on February 17, 1982, reversed the Superintendent's decision and held that appellee was entitled to allocation of Range Unit #27 (see Exh. 9).

Appellant seeks review of this decision.

Discussion and Conclusions

[1] Resolution 9-79, which is the governing law in this case, 2/ establishes grazing priorities for the use of reservation land. These priorities are: (1) Indian allocation for Indian owned-livestock; (2) Indian preference bid leases; and (3) non-Indian bid leases. There are no exceptions to this scheme.

[2] Because of these priorities, appellant, although an Indian using Indian land to support himself, is a lower priority user than appellee because the cattle he grazes on Range Unit #27 are not Indian owned. Therefore,

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2/ See 25 CFR 151.10 which provides that eligibility requirements for allocation of grazing privileges shall be prescribed by the tribe.

appellee, who would be grazing Indian-owned cattle, has priority to the use of Range Unit #27 over appellant.

[3] Paragraph B of the resolution sets forth the rule that allows cancellation of a grazing permit at any time if a claim is made that the range unit is not being grazed by Indian-owned livestock: "Allocations may be made on any unit not grazed by Indian owned livestock anytime during [the] 5-year permit period, for Indian owned cattle provided cattle are branded with enrolled adult member's brand" (see Exh. 1).

Appellant's grazing permit incorporates this limitation in the paragraph entitled "Termination and Modification" which states that "[i]t is understood and agreed that this permit is revocable in whole or in part pursuant to 25 CFR 151.15" (see Exh. 2). Section 151.15(c) permits the Superintendent to "revoke or withdraw all or any part of a grazing permit by cancellation or modification on 180 days' written notice for allocated Indian use." The Area Range Conservationalist for the Billings Area Office, BIA, testified that the combination of these rules meant, in his opinion, that a lease "could last anywhere from six months to five years if you are not an individual eligible for allocation" (Tr. 80).

Thus, appellee can force the cancellation of all or a part of appellant's lease if she is grazing her own cattle, branded with her brand.

There is no dispute that appellant owns cattle or that these cattle are branded with her brand. It appears from the testimony and the documentary

evidence that appellee owned 228 head, including 220 cows and 8 bulls, on October 21, 1981, the date her herd was counted to support her application for allocation (see Exh. 4, Tr. 25). Appellee testified that her herd now includes 180 heifers, 3/ 55 yearlings, and 10 bulls, a total of 245 head.

Appellee admits that she holds allocations on Range Units #83 and #289 (Tt. 88, 93). 4/ Under paragraph A of Resolution 9-79, she is entitled to additional allocations equal to the number of her herd plus 25 percent. 5/ Because the grazing limitations for these range units given in oral testimony by appellee and by BIA were conflicting (cf. Tr. 27 with Tr. 88), and because the figures are subject to exact verification by reference to BIA documents, this case will be remanded to BIA for a determination of the precise number of animal units from Range Unit #27 to which appellee is entitled.

Only that part of appellant's lease that represents the additional animal units to which appellee is entitled may be canceled. If appellee is entitled to less than all of Range Unit #27, in determining the geographical configuration of the part of the unit that is to be taken by appellee, BIA shall consider any improvements placed upon the unit by appellant and shall maximize the benefit of those improvements to appellant, within the constraints of reasonable range management.

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3/ The transcript reads that appellee owns "180 pairs." The Board interprets this to mean "180 heifers." See Tr. 89.

4/ The testimony indicated that appellee also holds a lease on Range Unit #295 (Tr. 27, 88). Because Resolution 9-79 does not require leased units to be taken into consideration when an application for allocation is filed, this unit must be excluded from the calculation of the number of animal units, defined in paragraph E of the resolution, to which appellee is entitled.

5/ Paragraph L of Resolution 9-79 establishes a maximum allocation of 500 head per person per year. This limitation is not relevant in appellee's case.

The BIA is instructed to return that part of appellant's advance rental payment on Range Unit #27 that is attributable to the part of the unit taken by appellee.

Therefore, the February 17, 1982, decision of the Acting Area Director and the July 2, 1982, recommended decision of the Administrative Law Judge are affirmed and accepted as modified by this decision. Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this decision is final for the Department. 6/

//original signed
Wm. Philip Horton
Chief Administrative Judge

We concur:

//original signed
Franklin D. Arness
Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge

6/ This decision does not preclude the parties from reaching any other mutually acceptable agreement as to the use of Range Unit #27 as long as that agreement is permissible under Resolution 9-79.